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[INSERT NAME]
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[INSERT DATE]

[INSERT D/C INFO]

Re: [INSERT CASE NAME]
Kings County Dkt./Ind. No. [#####]

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: ANGELO PIZZARRO

MOS TAX: [REDACTED]

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure # 1:

THE NYPD ENTERED A DISPOSITION OF OTHER MISCONDUCT NOTED, DATED 06/24/2009, AGAINST MOS PIZZARRO.
CASE STATUS: CLOSED ON 06/01/2009

Disclosure # 2:

[REDACTED] DECEMBER 12, 2013, [REDACTED] KINGS COUNTY DOCKET NUMBER [REDACTED], CRIMINAL COURT JUDGE GEORGE A. GRASSO [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] DISCREDITED MOS PIZZARRO'S
TESTIMONY IN ITS ENTIRETY. [REDACTED]
[REDACTED]

Disclosure # 3:

THE PEOPLE ARE AWARE OF THE FOLLOWING FEDERAL CIVIL RIGHTS ACTION(S) AND/OR STATE TORT CIVIL LAWSUIT(S) IN WHICH THE INDICATED OFFICER HAS BEEN NAMED AS AN INDIVIDUAL DEFENDANT. NOTE, THE DISPOSITION INFORMATION MAY NOT BE CURRENT:
1. MARIE BALAN V. CITY OF NEW YORK, ET AL, 009206/2015 FILED IN KINGS COUNTY SUPREME COURT.

Disclosure # 4:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED BETWEEN 05/17/2016 AND 05/18/2016, AGAINST MOS PIZZARRO:
ALLEGATION(S):
1. MOS PIZZARRO UTILIZED DEPARTMENT COMPUTERS TO ACCESS RECORDS AND DATA BASES FOR NON-DEPARTMENTAL PURPOSES.
CASE STATUS: CLOSED
ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE ISSUED AND FORFEITURE OF TWO (2) VACATION DAYS

Disclosure # 5:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 08/24/2016, AGAINST MOS PIZZARRO:
ALLEGATION(S):

1. COMPUTER MISUSE

CASE STATUS: CLOSED ON 09/06/2017

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE ISSUED

Disclosure # 6:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 08/05/2018, AGAINST MOS PIZZARRO:
ALLEGATION(S):

1. DRIVER LICENSE SUSP/REVOKED/EXP

CASE STATUS: CLOSED ON 08/10/2018

ACTION TAKEN: VERBAL INSTRUCTIONS

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH OCTOBER 13, 2020, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 7:

CCRB CASE: 201609557

REPORT DATE: 11/16/2016

INCIDENT DATE: 11/15/2016

SUBSTANTIATED CCRB ALLEGATION(S):

1. ABUSE – STOP

NYPD DISPOSITION: FORMALIZED TRAINING

OTHER MISCONDUCT NOTED:

1. OTHER MISCONDUCT NOTED – FAILURE TO PREPARE MEMOBOOK ENTRY

NYPD DISPOSITION: INSTRUCTIONS AND FORMALIZED TRAINING

Disclosure # 8:

CCRB CASE: 201702479

REPORT DATE: 03/29/2017

INCIDENT DATE: 03/29/2017

SUBSTANTIATED CCRB ALLEGATION(S):

1. ABUSE – INTERFERENCE WITH RECORDING

NYPD DISPOSITION: SCHEDULE A COMMAND DISCIPLINE

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SEE ATTACHMENT BELOW.

wrote on my memo book, what dates I wrote on my memo book over a year and change ago. I don't remember that.

THE COURT: Question is; are you telling the Court, are you testifying now under oath that the memo book that you were using on the dates of Hurricane Sandy including November first of 2012 that you loss (sic) that memo book after December 13th of 2012, that the reason you loss (sic) that memo book was because of (sic) after December 13th of 2012 is because of Hurricane Sandy, that is what you are testifying too?

THE WITNESS: Yes.

Having been unable to reconcile diametrically opposed testimony of the two dates and finding the explanation provided by Police Officer Pizzarro citing "the Hurricane Sandy era"⁵ for the first time during the reopened hearing, this court has reason to find the officer not worthy of belief. *People v Martinez*, 44 AD3d 795 (2nd Dept 2007), *lv denied* 10 NY 3d 768 (2008).

I find that the entirety of his testimony regarding a so called "Hurricane Sandy era" to be bizarre and implausible. When Police Officer Pizzarro testified before this court on November 14, 2013 as to why he did not have his memo containing the date of the subject incident, he did not hedge. He testified clearly and directly that the reason he did not have it is because it was in his locker when Hurricane Sandy arrived, his command was "destroyed" and his locker floated

⁵ Testimony of P.O. Pizzarro, December 4, 2013, at 53, in response to a question from the court): THE COURT: A question from the Court.

You have mentioned the Hurricane Sandy era several times. Could you please give me the parameters of dates as to what you consider, to the extent, what you consider as you are testifying here right now the Hurricane Sandy era to be?

THE WITNESS: From November of (sic) October 31, 2012, all the way to the end of the year, sorry end of 2012.

away along with his memo book. He testified to this sequence of events in detail. Only when confronted by defense counsel's finding of a memo book supposedly swept away by a storm of historic proportions did he change his testimony and attempt to articulate something he named the "Hurricane Sandy era", and only at that point did he come to court with the missing and allegedly "destroyed" memo books. His manner in attempting to articulate this stark change in testimony was evasive and defensive. In sum, it was not worthy of belief by the court. *People v Martinez*, 44 AD3d at 796, *supra*.

Having rejected the sum and substance of Officer Pizarro's testimony on December 4th, this court is now constrained to take another look at the entirety of this officer's testimony. This is a case where Officer Pizarro was not mentioned in any of the arrest paperwork of the arresting officer, P.O. Jermaine Taylor. In fact, during his testimony Officer Taylor admitted that he never even mentioned Officer Pizarro and his alleged sighting of a firearm and exclamation to the District Attorney's Office at ECAB. Significantly, Officer Pizarro's alleged sighting of a firearm and exclamation are noticeably absent from both officers' memo book entries for January 12, 2012.

In sum, the initial police action that led to the recovery of the firearm in this case now is based in large part on the testimony of an officer that this court believed, for the reasons stated, testified in a manner that was not worthy of belief on December 4, 2013. Therefore, taking the record as a whole this court will not credit one part of Officer Pizarro's testimony while rejecting another substantial portion of his testimony. *People v Martinez*, 44 AD3d at 796, *supra*. This is especially true in a circumstance where none of the police records created in a contemporaneous manner by Officers Pizarro and Taylor offer independent support to Officer

Pizzarro's assertions regarding a firearm.

Having discredited the testimony of Officer Pizzarro in its entirety, it would be inappropriate for this court to permit his alleged exclamation regarding the firearm to stand as a basis for the initial pursuit of the defendant through the testimony of Officer Taylor. At the time this court initially credited Officer Taylor's testimony as to having heard that statement, it was corroborated by the testimony of Officer Pizzarro. At this juncture that alleged statement, lacking any corroborating police records to support it, will not be given credibility as a partial basis for the initial pursuit of the defendant by Officers Pizzarro and Taylor. This court will not permit an uncorroborated statement of an otherwise discredited officer to be utilized by another officer as a basis for police action. Remaining for the court's consideration are Officer Taylor's personal observations that he conveyed to the District Attorney's Office at ECAB as well as in his testimony before this court.

Essentially, Officer Taylor testified he saw the defendant put his right hand outside his winter coat and that he looked like he "possibly" had been holding something in the area of his waistband and that to him provided reasonable suspicion. The following colloquy is the testimony of Officer Taylor (**at the first hearing**) on cross examination on November 15, 2013 at 93 and 108-113.

Testimony at 93:

Q: You didn't see a gun, right?

A: When I saw - - when Officer Pizzarro drew my attention to him, he had already put his coat down and had, you know, his hand over it. That's what I saw. I saw his hand like he was gripping something in his waistband.

Q. By gripping?

A. Holding something.

Q. The grip area of the gun?

A. Possibly.

Testimony at 108-113:

Q. Let me ask you this question, then on January 13, you spoke with a representative of the District Attorney's office about the case?

MR. SEGURA: Objection.

THE COURT: Overruled.

A. Yes.

Q. And you told them what happened in the case?

A. Yes.

Q. You told them that the location of this case was 3112 Bayview?

A. Yes.

Q. And you told them that before you saw a gun at 3112 Bayview, you saw a group of men walking from one building to another.

A. Yes. That's about what I told them.

Q. You told them you saw Mr. [REDACTED] grab his waistband?

A. Yes.

Q. You told them that Mr. [REDACTED] looked in your direction?

A. Yes, I did.

Q. You told them that it was at that moment that Mr. [REDACTED] ran?

A. Yes. Once we got up on the sidewalk, you know, he looked at us and started going southbound.

Q. That's what you told the district Attorney's office (sic) right?

A. Yes.

Q. And you didn't tell the District Attorney's office that your partner saw a gun in front of 3114 Bayview; did you?

A. I don't think so.

MR. SEGURA: Again this question has been asked and answered.

THE COURT: Overruled.

This is in the context now immediately subsequent to the arrest?

MR. SEGURA: Correct.

THE COURT: The earlier line of questioning was not tied in to the immediate aftermath of the arrest. So, I'm going to permit it.

Q. You did not tell the person in the District Attorney's office that your partner, Officer Pizzarro saw Mr. [REDACTED] with a gun.

A. From what I remember, I don't think so. But it's not unusual for, you know, to give our, you know, view of what happened We (sic) tell them like this is what I saw, you know, I saw this is, you know, my view. I saw Mr. [REDACTED]'s actions and, you know, I gave that to the assistant district attorney.

Q. When you speak to the District Attorney's office it's important to be truthful; right?

MR. SEGURA: Objection.

THE COURT: Overruled.

THE WITNESS: Yes, it is.

Q. It's important to be complete?

A. Yes, it is.

Q. That's because this information will serve as the basis for prosecution; right?

A. Yes.

Q. And that applies to both whether a crime is committed, right?

A. Yes.

Q. As well as to the basis for the stop?

A. Yes.

Q. The legality of the stop?

A. Yes.

A. (sic) Now, when you spoke to the District Attorney's office you didn't tell them that your partner said oh shit there's a gun?

A. I didn't. Sometimes, you know, when you're up all night processing the arrest you forget to say things, you know, you're going down to speak to the assistant district attorney at a later time you know, and you tell them everything that you remember. I mean you're up for ten, twelve hours You're (sic) exhausted. We're all human. We sometimes forget to say one thing at one point, and you know, correct it at a later point.

Q. You didn't tell them that Officer Pizzarro saw Mr. [REDACTED] with a gun?

A. The assistant district attorney knew who I was working with. I told them all the officers that, you know, I was with at the time.

Q. Did the District Attorney's office ask you who you were working with at that time?

A. I believe they did.

Q. Did you provide Officer Pizzarro's name?

A. Yes? (sic).

Q. Officer Walsh?

A. Yes.

Q. But you didn't (sic) them that Officer Pizzarro saw a firearm?

MR.SEGURA: Objection.

THE COURT: I think that you asked that question numerous times.

Q. You didn't tell them. (sic).

THE COURT: So that objection is sustained grounds asked and answered.

Q. You didn't tell them that you saw Mr. [REDACTED] holding what appeared to be an object?

A. I told them he was grabbing his waist which, you know, is indicative of holding a firearm the way he was holding it, yes that indicates to me that he was holding a firearm.

Q. You didn't tell the District Attorney's office that it indicated to you that he was holding a firearm, right?

A. From what I remember, I said that he was holding his waistband you know, that.

Q. Officer, would a copy of the screening sheet prepared by the District Attorney's office based on a conversation with you refresh your recollection?

A. Sure.

MR. DANIELS: Your Honor, I'm asking that a copy of the Complaint Room Screening Sheet be shown to the officer.

THE COURT: Mark that for ID.

Q. Have you had an opportunity to review the Complaint Room Screen (sic) Sheet?

A. Yes.

Q. Does that refresh your recollection as to whether you told the District Attorney's office that Mr. [REDACTED] was holding an object?

A. I told them that he was grabbing his waistband which is indicative to me as a police officer on patrol, you know, some experience with that he was holding a weapon.

Q. You didn't tell the District attorney's (sic) office that it was indicative to you that he was holding a weapon?

A. I told them that he was grabbing his waistband. You know for me that's reasonable suspicion - -

THE COURT: Let him finish. Do you want to finish the answer officer?

THE WITNESS: I'm good.

CONCLUSIONS OF LAW

A defendant who challenges the legality of a search and seizure has the burden of proving by a preponderance of the evidence that the officers acted illegally (*People v Whitehurst*, 25 NY2d 389, 391 [1969]), the People, however, have the burden of going forward with credible evidence tending to show that the officers acted lawfully (*People v Malinsky*, 15 NY2d 86, 91, n.2 [1965]). *People v Whitehurst*, 25 NY2d at 391, supra.

As stated by the Court of Appeals in *People v De Bour*, 40 NY2d 210, 223 (1976), "[w]here a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or a misdemeanor, the CPL authorizes a forcible stop and detention of that person (CPL 140.50, subd. 1; see *Terry v Ohio*, 392 US 1, *People v*

Cantor, supra.” In order to execute this level three intrusion mandated by *De Bour* as constitutional, an officer may pursue a defendant. *People v Martinez*, 80 NY2d 444, 447 (1993).

In the instant case, based on Officer Taylor’s testimony that he saw the defendant grab his waistband, his actions and the other officers’ actions of pursuing the defendant were not based on a reasonable suspicion that the defendant had committed, was committing or was about to commit a crime. In fact, in this case the defendant’s placing his hand outside a winter coat in the area of his waistband while standing among a group of young men in early January would not appear to justify a level one intrusion. *People v De Bour*, 40 NY2d at 223, *supra*.

Here, there is certainly no lawful predicate to have pursued the defendant to stop and detain him. Defendant’s act of placing his hand on his waist was equally consistent with innocuous behavior. However, in a level one intrusion the defendant has the right to not answer or to walk or run away, but in any case a pursuit and forcible seizure as happened here would not be permissible. *People v Howard*, 50 NY2d 583, 592 (1980).

In *People v Cadle*, 71 AD3d 689 (2nd Dept 2010), the Appellate Division affirmed the suppression court’s granting of defendant’s motion to suppress the physical evidence seized, to wit, a gun, where the officer testified at the hearing that he observed the defendant walking at night on the street while holding his waist band in a high crime area. The officer and his two partners chased the defendant and he threw away a gun as he was being pursued. In affirming the lower court’s decision to suppress the gun, the Appellate Court held that, “[u]nder the circumstances of this case, the officers’ pursuit of the defendant was unlawful, and the defendant’s discarding of the weapon during the pursuit was precipitated by the illegality and was not attenuated from it (see *People v Lopez*, 67 AD3d 708 [2009]; cf. *People v Boodle*, 47

NY2d 398 [1979], *cert denied* 444 US 969 [1979]". *People v Cadle*, 71 AD3d at 689-690.

Accordingly, for the reasons stated defendant's motion to suppress the physical evidence to wit, a firearm, is granted.

This opinion constitutes the decision and order of the court.

Dated: December 12, 2013
Brooklyn, New York



GEORGE A. GRASSO
Acting Supreme Court Justice